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March 4, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
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Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

MOTION TO SUPPORT AB 102 (PACHECO) RELATING TO UNFAIR COMPETITION (ITEM NO. 90-A, AGENDA OF MARCH 4, 2003)

Item No. 90-A on the March 4, 2003 agenda is a motion by Supervisor Antonovich regarding alleged abuse of California's Unfair Competition Law. This memo addresses item #3 in the motion to support AB 102 (Pacheco) which would reform the way civil court actions are brought against businesses engaging in unfair competition. **A position on AB 102 is a matter for Board policy determination.**

According to Assembly Member Pacheco's press statement on the introduction of AB 102, the intent of the bill is to "provide relief from the mounting frivolous lawsuits filed by trial attorneys against businesses in California... (and) reform state law by curbing private attorney abuse of filing suits that lack merit."

AB 102 would revise the enforcement provisions of the Business and Professions Code by creating a new plaintiff category of "representative civil action." This category would not apply to actions brought by the Attorney General or a district attorney or a city attorney.

A representative civil action could only take place under certain conditions such as:

- 1) A plaintiff has suffered distinct and palpable injury and is an adequate representative of the interests of the general public, has retained an attorney who will adequately represent the interests of the general public; and has claims typical of the claims of the general public.

- 2) A plaintiff waits 90 days after serving a notice of intent to sue on the defendant before filing the action.

Additionally, AB 102 provides that a representative civil action may not be brought if the defendant corrects the business act or practice described in the notice of intent to sue, and provides a letter to the plaintiff documenting that the act or practice has been corrected before the end of the 90-day period. AB 102 would establish rules related to discovery whereby the plaintiff would certify to the court that, the discovery is not being used to obtain information to be used in another lawsuit, or to unnecessarily delay or needlessly increase the cost of litigation, that the likely benefit outweighs its burden or expense, and discovery will not result in annoyance, embarrassment, oppression, or undue burden or expense to any party.

In the last legislative session, Assembly Member Pacheco authored a similar a bill, AB 1884, that failed passage in the Assembly Judiciary Committee. AB 1884 was supported by the Civil Justice Association of California (sponsor), the Association of California Insurance Companies, the California Association of Realtors, the California Chamber of Commerce, the California Dental Association, and the California Retailers Association among others. AB 1884 was opposed by the California Rural Legal Assistance Foundation, Consumer Attorneys of California, Consumers Union, the Attorney General, and the Western Center on Law and Poverty.

On December 10, 2002, your Board instructed the Chief Administrative Officer to monitor AB 69 (Correa) which is a spot bill that is intended to initiate negotiations on tougher standards for unfair competition suits. Because the author's office indicated that AB 69 is a work in progress, the County has not taken a position on the bill. AB 69 has not been amended and it has not been set for a hearing. Our Sacramento advocates will continue to check on the progress of this bill and will advise the Board when a position is warranted.

AB 102 was introduced on January 10, 2003, and has been referred to the Assembly Judiciary Committee. No hearing date has been set and, there is no registered support or opposition to the bill at this time.

DEJ: GK
MAL: JF:ib

c: Executive Officer, Board of Supervisors
 County Counsel
 Consumer Affairs
 District Attorney